

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CLARKE SHELDON LOWE,

Petitioner,

v.

JAMES E. TILTON, Secretary,

Respondent.

Civil No. 07-2232 LAB (CAB)

**ORDER GRANTING MOTION FOR AN  
ENLARGEMENT OF TIME TO FILE  
RESPONDENT'S MOTION TO  
DISMISS OR ANSWER  
[Doc. No. 7.]**

Petitioner, a state prisoner, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 [Doc. No. 1] and an Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. §2254 by a Person in State Custody. [Doc. No. 2.] On January 18, 2008, Respondent filed a motion for an enlargement of time to file a motion to dismiss or answer. [Doc. No. 5.] On January 18, 2008, the court granted that motion. [Doc. No. 6.] Respondent has now filed another motion for an enlargement of time to file a motion to dismiss or answer. [Doc. No. 7.] Good cause having been shown, Respondent's request for an enlargement of time is **GRANTED**. However, **NO FURTHER REQUESTS OF ENLARGEMENT OF TIME TO FILE A MOTION TO DISMISS OR ANSWER WILL BE GRANTED ABSENT EXTRAORDINARY CIRCUMSTANCES.**

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1                   **THE COURT FURTHER ORDERS THAT:**

2                   1. If Respondent contends the Petition can be decided without the Court's reaching the  
 3                   merits of Petitioner's claims (e.g., because Respondent contends Petitioner has failed to exhaust  
 4                   any state remedies as to any ground for relief alleged in the Petition, or that the Petition is barred  
 5                   by the statute of limitations, or that the Petition is subject to dismissal under Rule 9 of the Rules  
 6                   Governing § 2254 Cases, or that all of the claims are procedurally defaulted, or that Petitioner  
 7                   is not in custody), Respondent shall file a motion to dismiss pursuant to Rule 4 of the Rules  
 8                   Governing § 2254 Cases no later than **March 24, 2008**. The motion to dismiss shall not address  
 9                   the merits of Petitioner's claims, but rather shall address all grounds upon which Respondent  
 10                  contends dismissal without reaching the merits of Petitioner's claims is warranted.<sup>1</sup> At the time  
 11                  the motion to dismiss is filed, Respondent shall lodge with the Court all records bearing on  
 12                  Respondent's contention in this regard. A hearing date is not required for the motion to dismiss.

13                  2. If Respondent files a motion to dismiss, Petitioner shall file his opposition, if any, to  
 14                  the motion no later than **April 24, 2008**. At the time the opposition is filed, Petitioner shall  
 15                  lodge with the Court any records not lodged by Respondent which Petitioner believes may be  
 16                  relevant to the Court's determination of the motion.

17                  3. Unless the Court orders otherwise, Respondent shall not file a reply to Petitioner's  
 18                  opposition to a motion to dismiss. If the motion is denied, the Court will afford Respondent  
 19                  adequate time to respond to Petitioner's claims on the merits.

20                  4. If Respondent does not contend that the Petition can be decided without the Court  
 21                  reaching the merits of Petitioner's claims, Respondent shall file and serve an answer to the  
 22                  Petition, and a memorandum of points and authorities in support of such answer, pursuant to  
 23                  Rule 5 of the Rules Governing § 2254 Cases no later than **April 7, 2008**. At the time the answer  
 24                  is filed, Respondent shall lodge with the Court all records bearing on the merits of Petitioner's  
 25                  claims. The lodgments shall be accompanied by a notice of lodgment which shall be captioned  
 26                  **"Notice of Lodgment in 28 U.S.C. § 2254 Habeas Corpus Case — To Be Sent to Clerk's**

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<sup>1</sup> If Respondent contends Petitioner has failed to exhaust any state remedies as to any ground for relief alleged in  
 the Petition, the motion to dismiss shall also specify the state remedies still available to Petitioner.

1     **Office.**" Respondent shall not combine separate pleadings, orders or other items into a  
2     combined lodgment entry. Each item shall be numbered separately and sequentially.

3         5. Petitioner may file a traverse to matters raised in the answer no later than May 7,  
4     2008. Any traverse by Petitioner (a) shall state whether Petitioner admits or denies each  
5     allegation of fact contained in the answer; (b) shall be limited to facts or arguments responsive  
6     to matters raised in the answer; and (c) shall not raise new grounds for relief that were not  
7     asserted in the Petition. Grounds for relief withheld until the traverse will not be considered.  
8     No traverse shall exceed ten (10) pages in length absent advance leave of Court for good cause  
9     shown.

10             All other rulings set forth in this Court's order of December 4, 2007 [Doc. No. 3] shall  
11     remain in effect.

12             **NO FURTHER REQUESTS OF ENLARGEMENT OF TIME TO FILE A**  
13     **MOTION TO DISMISS OR ANSWER WILL BE GRANTED ABSENT**  
14     **EXTRAORDINARY CIRCUMSTANCES.**

15             **IT IS SO ORDERED.**

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17     DATED: February 15, 2008

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CATHY ANN BENCIVENGO  
United States Magistrate Judge

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